IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

FRIDAY, THE 8TH JUNE 2007 / 18TH JYAISHTA 1929

WP(C).No. 25067 of 2004(H)

OS.169/1996 of M.C.,PARAPPANANGADI

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PETITIONERS:

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1. ULLERI THANKAMANI,
   RESIDING AT KODINJI AMSOM DESOM, TIRURANGADI TALUK

2. KUTTIMON,
   RESIDING AT ULLANAM AMSOM, DESOM,
   THIRURANGADI TALUK.

3. KUTTIMALU,
   RESIDING IN -DO- -DO-.

4. SHOBHANA,
   RESIDING AT CHELAMBRA AMSOM, DESOM, ERNAD TALUK.

5. JALAJA, D/O. ULLERI SIVARAMAN,
   RESIDING AT VALLIKKUNNAM AMSOM AND DESOM,
   TIRURANGADI TALUK.

6. MINOR JASEENA, D/O. SULOCHANA,
   RESIDING AT ULLANAM AMSOM DESOM,
   THIRUVANGADI TALUK, AGED 17.

7. MINOR JAYESH, S/O. -DO-,
   AGED 15 IN -DO- -DO-.

8. SULOCHANA, W/O. SIVARAMAN IN -DO-.
   (MINORS 6 AND 7 REPRESENTED BY GUARDIAN THEIR
   MOTHER PETITIONER NO.8).

BY ADV. SRI.S.V.BALAKRISHNA IYER
SRI.HARISH R. MENON

RESPONDENTS:

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1. KALATHINGAL KUMARAN,
   RESIDING AT ULLANAM AMSOM DESOM,
   TIRURANGADI TALUK.

2. MALIYEKKAL IMBICHI UMMA IN -DO- -DO-.

3. DEVU, D/O. KALATHINGAL KUMARAN IN -DO-.

4. ULLERI VELAYUDHAN,
RESIDING AT IN -DO-.

5. APPUKUTTAN,
RESIDING IN -DO- -DO-.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 08/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APENDIX

PETITIONERS' EXTS:

EXT.P1 – TRUE COPY OF AFFIDAVIT DT.21.8.03 IN SUPPORT IF I.A.1500/03 IN O.S.169/96 OF MUNSIFF'S COURT, PARAPPANANGADI.

EXT.P2 – TRUE COPY OF ORDER DT.8.10.03 OF DO. IN I.A.1500/03 IN O.S.169/06.

/TRUE COPY/

PIUS C. KURIAKOSE, J.

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W.P.(C)No.25067 OF 2004

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DATED THIS THE 8TH JUNE, 2007

J U D G M E N T

Ext.P2 order passed by the learned Munsiff dismissing an application filed by the plaintiffs in a suit for fixation of boundary is under challenge in this proceeding under Article 227 of the Constitution of India. On the application submitted by the plaintiffs-petitioners, a commissioner was appointed for measuring the properties with the assistance of the Taluk Surveyor and to prepare a plan showing the boundaries fixed as per measurement. Report and plan were accordingly submitted on 3.7.1998. As regards that plan, the 3rd defendant in the suit, the 3rd respondent herein had some objections and he filed I.A.No.2244 of 2002 for remitting the plan to the commissioner and to have a further measurement. Pursuant to that order, the commissioner conducted measurement with the assistance of another Taluk Surveyor (the successor-in-office of the Taluk Surveyor who had prepared the first plan) and filed a fresh plan. Alleging that the two plans filed are entirely different; that there is considerable difference between the first plan and the second plan; that this is the result of a mistake deliberately committed by the new surveyor and that the measurement leading to the new plan has not

been proper, the instant application, I.A.1500 of 2003 was filed by the petitioners. The learned Munsiff has taken the view that the petitioners cannot be heard to say that the survey divisions were located without fixing the boundaries since the measurement was in the presence of rival parties and the commissioner. According to the learned Munsiff, no objections were raised when the Surveyor was fixing the boundaries during the course of the measurement and no complaints were also raised during the measurement regarding location of the survey boundary and since the first plan was remitted after noticing that there was survey infirmities, the petitioners are not entitled to rely on the first plan at all.

2. Even though notice has been served on all the contesting respondents, none of them have come forward to resist the Writ Petition.

3. I have heard the submissions of Sri.Harish R.Menon, counsel for the petitioners. The learned counsel submitted that the view of the learned Munsiff that the parties should have raised the objections during the course of measurement and having not done so they are not entitled to object to the plan submitted by the surveyor is not correct. The view of the learned Munsiff is quite unrealistic, counsel

submitted. The very same learned Munsiff had permitted remittance of the first plan and report of the advocate commissioner, though the first report and the plan were also submitted on the basis of a measurement in the presence of the parties. The 3rd respondent at whose instance the report was remitted as per I.A.No.2244 of 2002 had not raised objections during the course of the measurement. Even then, the learned Munsiff did not find it difficult to order remittance. The petitioners came to know about the infirmities in the subsequent plan only when copy of the same was submitted in the court along with the commissioner's report.

4. Having gone through Ext.P2 order, it is to be seen that the approach of the learned Munsiff to the grievance of the petitioners was not proper. The complaint was that two different Taluk Surveyors have measured the property in two different manners and the boundary has been fixed by them totally differently and therefore a further refixation of the boundary should be ordered on the basis of a measurement by the District Surveyor. Even though it may not be possible to say that Ext.P2 order is wholly unreasonable and unreasoned as to warrant correction under this Court's supervisory jurisdiction, considering the nature of the suit which is one for fixation

of boundaries and the fact that the petitioners are the plaintiffs and that it will be in the interest of both sides to have the correct boundaries fixed at the earliest by seniormost sruvey authority of the district, I am inclined to direct the properties to be measured again with the assistance of the District Surveyor. Significantly, in Ext.P2 the learned Munsiff does not even refer to the specific allegations of the petitioners that the surveyor who conducted the second measurement and submitted the second plan was swayed by extraneous considerations. At any rate, I feel that the measurement of the properties by the District Surveyor is necessary for having a correct quietus to the issue.

5. Ext.P2 is accordingly set aside and I.A.No.1500 of 2003 filed by the petitioners is allowed. Since I am told that the advocate commissioner who prepared the report earlier is no more, the learned Munsiff will appoint a fresh commissioner and direct the District Superintendent of Surveys to assist that commissioner. All expenses incurred in the context of measurement pursuant to this judgment will be borne by the petitioners themselves and such expenses will not be part of the ultimate costs of the suit.

The Writ Petition is allowed as above. No costs.

(PIUS C.KURIAKOSE, JUDGE)

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